

REMARKS/ARGUMENTS

I. Introduction

Reconsideration of this application is respectfully requested. Claims 1-20 are pending. By this amendment, the specification is amended to correct formal matters. Claims 1-6 and 11-15 are amended to correct formal matters and claims 18-20 are added to further recite the features of the invention. In view of the foregoing amendments and following remarks, Applicant respectfully submits that the application is in condition for allowance and requests that all outstanding rejections be withdrawn.

II. Specification

By this amendment the specification is amended to correct formal matters. Specifically, the first full paragraph on page 1, beginning at line 2, is replaced to state that this application is a “divisional” of application 10/105,730, which is now U.S. Patent No. “6,719,173.” No new matter is entered.

III. Claims

A. The Prior Claim Amendment Submitted March 29, 2005

Upon review of the Listing of Claims in the amendment submitted March 29, 2005, Applicant’s Representative has determined that several unmarked and unintended changes were made to original claims 1 and 6 in addition to the marked changes. These unmarked changes were made unintentionally. Nevertheless, in order to make the record clear, Applicant sets forth below claims 1 and 6 as presented in the March 29, 2005, amendment showing the proper markings relative to the original claims (highlighted in **bold**).

1. (currently amended) A package for dispensing a liquid product, which comprises:
 - an outer shell having a flexible resilient sidewall, a base wall and a finish surrounding an outlet opening[**(,)]**;
 - an inner liner disposed within said outer shell, said inner liner being simultaneously formed with said outer shell in a manner so as to be readily separable from said sidewall and said

base wall of said outer shell and being collapsible with respect to said outer shell to dispense product within said liner[[]];
a dispensing structure secured to said finish[[]]; and
an open orifice in said base wall of said outer shell, said ~~opening open-orifice~~ being sized to prevent rapid egress of air through said orifice in response to squeezing of said sidewall so that pressure on said inner liner from squeezing said sidewall forces product within said liner out of said outlet opening and said structure, said orifice being sized to permit slow ingress of ambient air into said shell in response to release of said sidewall to permit said sidewall to return to its unsqueezed configuration.

6. (currently amended) A package for dispensing a liquid product, which comprises:
an outer shell having a flexible resilient sidewall, a base wall and a finish surrounding an outlet opening[[]];
an inner liner disposed within said outer shell, said inner liner being simultaneously formed with said outer shell in a manner so as to be readily separable from said sidewall and said base wall of said outer shell and being collapsible with respect to said outer shell to dispense product within said liner[[]];
a dispensing closure secured to said finish, including a dispensing opening for dispensing of product from within said liner when said package is inverted and said shell sidewall is squeezed[[]]; and
an open orifice in said base wall of said outer shell, said open orifice being sized to prevent rapid egress of air through said orifice in response to squeezing of said sidewall so that pressure on said inner liner from squeezing said sidewall forces product within said liner out of said ~~outer outlet~~ opening and said dispensing opening, said orifice being sized to permit slow ingress of ambient air into said shell in response to release of said sidewall to permit said sidewall to return to ~~it its~~ unsqueezed configuration.

Applicant's Representative notes that the Listing of Claims in the instant amendment shows current changes relative to the claims as presented in the March 29, 2005, amendment.

B. Rejection Under 35 U.S.C. § 102(b)

The Office Action rejects claims 1, 5-12 and 15-17 under 35 U.S.C. § 102(b) over Safian, U.S. Patent 6,083,450 ("the '450 patent"). Specifically, the Office Action states that "Safian

shows a package for dispensing a liquid product comprising an outer shell 30, inner liner 32, dispensing structure 82 and open orifice 42.” Office Action, page 2. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); see M.P.E.P § 2131. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The Applicant respectfully traverses the rejection for at least the following two reasons.

First, with regard to independent claims 1, 6 and 11, the atmospheric vent opening 42 in the ‘450 patent is not “sized to prevent rapid egress of air through said orifice in response to squeezing of said sidewall so that pressure on said inner liner from squeezing said sidewall forces product within said liner out of said outlet opening and said dispensing structure, said orifice being sized to permit slow ingress of ambient air into said shell in response to release of said sidewall to permit said sidewall to return to its unsqueezed configuration,” as currently recited in the foregoing claims. FIG. 3, for example, in the ‘450 patent, shows that the diametral slit 40 defining atmospheric vent opening 42 extends almost completely across the base 38. Applicant respectfully submits that this configuration does not meet the recited language. In fact, the background of the instant specification discusses the ‘450 patent and the additional advantages of the instant invention:

U.S. Pat. Nos. 6,083,450 and 6,238,201 disclose a multilayer container that includes an outer plastic shell and a plastic inner liner for holding product to be dispensed. As product is dispensed from the package, the inner liner pulls away from the outer shell and collapses. An atmospheric vent is disposed in the bottom wall of the shell for venting the volume between the liner and the shell to atmosphere so that the outer shell retains its geometry or configuration while the inner liner collapses as product is dispensed. It is a general object of the present invention to provide improved techniques for venting the space or volume between the shell and the liner.

Page 1, lines 9-15.

In accordance with one aspect of the present invention, in the embodiment of FIGS. 1-4, vent opening 38 in base wall 30 of shell 26 is a small orifice-size opening. That is, opening 38 is sufficiently small to prevent rapid egress of air through the opening in response to squeezing of container sidewall 28. In this way, the forces of squeezing sidewall 28 are primarily directed to squeezing liner 36 by compressing the air volume between the liner and the shell, and to dispensing product from within the liner through the dispensing opening of closure 24. If the sidewall squeezing forces remain constant, the air within the volume between shell 26 and liner 36 will eventually flow through opening 38 sufficiently that squeezing forces are no longer applied to the liner. When the container sidewall is released, air will slowly flow back into shell 26, between liner 36 and the inside surface of the shell, through small orifice-size opening 38.

Page 6, lines 11-20 (emphasis added).

Accordingly, the Applicant submits that the structure shown and disclosed in the '450 patent is not capable of performing the recited function. Thus, Applicant respectfully requests that the rejection of at least claims 1, 6 and 11 be withdrawn. Claims 2-5, 7-10 and 12-20 depend from claims 1, 6 and 11, respectively, and are submitted as being allowable for at least the same reasons.

Second, the Office Action improperly rejects claim 12 as being anticipated by the '450 patent. Claim 12 recites "said open orifice has a size in the range of about 0.0007 to 0.003 square inch." Applicant respectfully submits that the '450 patent fails to disclose any specific size range for the atmospheric vent opening 42 and, thus, cannot anticipate claim 12. Thus, Applicant respectfully requests that the rejection be withdrawn.

B. Rejection Under 35 U.S.C. § 103(a)

The Office Action rejects claims 2, 4, 12 and 14 under 35 U.S.C. § 103(a) over the '450 patent. Specifically, the Office Action takes the position that the '450 patent discloses the claimed invention except for the specific area of the orifice and that a change in size of the orifice area would have been obvious. The Office Action ostensibly takes Official Notice with respect to the size ranges.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* M.P.E.P. § 2143. The Applicant respectfully traverses the rejection for at least the following two reasons.

First, as to claims 2 and 12, Applicant submits that there is no suggestion or motivation, either in the '450 patent or in the knowledge generally available to one of ordinary skill in the art, as to why one would modify the atmospheric vent opening 42 to have the specific recited area range. The Office Action uses impermissible hindsight reconstruction to meet the features of the claim. As noted above, the instant specification sets forth various advantages that arise from the small orifice size.

Second, with regard to claims 4 and 14, the claims recite "said open orifice is circular and has a diameter of about 0.010 to 0.060 inch." Here, the '450 patent not only fails to suggest why one of ordinary skill in the art would modify the size of atmospheric vent opening 42, it also fails to show or teach a circular opening. In the '450 patent, diametral slit 40 defines atmospheric vent opening 42 (*see* FIG. 3 and column 2, line 54) and is not circular.

The Office Action rejects claims 3 and 13 under 35 U.S.C. § 103(a) over the '450 patent in view of U.S. Patent No. 5,125,534 to Rose et al. ("the '534 patent"). The Applicant respectfully traverses the rejection. Claims 3 and 13 recite "said open orifice is rectangular and has a size of about 0.125 inch by about 0.006 to 0.008 inch." As above, Applicant submits that there is no suggestion or motivation, either in the '450 patent or in the knowledge generally available to one of ordinary skill in the art, as to why one would modify the atmospheric vent opening 42 to have the specific recited size range. In any case, claims 3 and 13 depend from claims 2 and 12, respectively, and are, thus, submitted as being allowable for at least the same reasons discussed above.

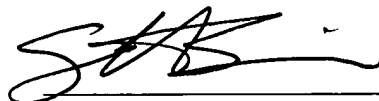
VI. Conclusion

In view of the above amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-17. Pending claims 1-20 are now believed to be in condition for allowance and Applicant respectfully solicits a notice of allowance indicating the same. No fee is believed to be due for this amendment in addition to the fees for the one-month extension of time and the Request for Continued Examination. If, however, additional fees are required, please charge any underpayment, or credit any overpayment, to deposit account no. 22-0261. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

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